

REMARKS

Claims 1-16 are pending in the present application. No claims have been amended or cancelled.

Reexamination of the application and reconsideration of the rejections are respectfully requested in view of the following remarks, which follow the order set forth in the Office Action.

Rejection under 35 U.S.C. § 102(b) is Traversed

Claims 1, 3-8, 10, 11, and 13-16 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application No. 2002/0148157 (hereinafter referred to as "Rollins"). Applicants respectfully traverse the rejection for the following reasons.

Claim 1 recites a camouflaged termite monitoring device comprising a housing configured as a landscaping element. The housing is adapted to engage an upper ground surface and comprises a cavity having an opening through a ground contacting surface. The termite monitoring device requires a mesh-like member to retain a bait cartridge in the cavity. Further, an inspection hatch is operably engaged with the housing and is configured to allow visual inspection of the bait cartridge within the cavity from outside the housing.

The Action asserts that the Rollins device comprises a cavity defined by a housing (12) with an opening (22) and a screw-shaped body (14), wherein the body (14) is alleged to be a mesh-like member covering the opening (22). The cavity contacts the upper ground surface. *OA, page 2*. The Action further asserts that Rollins discloses an inspection hatch (24) on the housing (12) for visual inspection of the bait cartridge (88) within the cavity from outside the housing (12) without removing the housing (12) from the upper ground. *Id.* Applicants respond to each of these assertions in turn below.

First, Rollins does not expressly or inherently describe a camouflaged termite monitoring device configured as a landscape element. Rollins discloses a bait station constructed in such a way that it facilitates both insect entry into the bait station and installation of the bait station below grade. *Rollins at [0001]*. The Rollins device has a "flat profile" "so that it does not provide a tripping hazard and does not interfere with the use of home lawn implements, such as a lawn mower." *Id. at [0018]*. Applicants submit that a device with a flat profile, installed below grade would not be "camouflaged" nor would one of ordinary skill recognize such a structure as a landscape element. In contrast, the instant claims require a housing configured as a landscaping element installed without implanting the housing below grade. *Present Specification at [0008]*. A landscaping element is preferably

unobtrusive or otherwise natural in residential settings and thus camouflaged with items commonly found in a residential yard, for example, a rock, log, paving or stepping stone, brick, or border of a flower bed. *Id. at* [0018]. Therefore, Rollins does not expressly or inherently describe a housing configured as a landscaping element, as claimed.

Second, Rollins does not expressly or inherently describe a mesh-like member to retain a bait cartridge in the cavity. Rollins discloses that the screw-shaped body of the device receives the bait cartridge. *Rollins at* [0009]. As a result, the bait cartridge of Rollins is positioned at least in the screw-shaped body and not completely retained in the cavity defined by housing (12) engaged to the ground contacting surface as suggested in the Action. Because the bait cartridge positioned in the screw-shaped body, the bait is below the ground contacting surface. *Id. at* ¶¶[0001], [0010], [0013]. By contrast, in the instant invention, the ground contacting surface of the housing may be considered the bottom surface of the device. *Present Specification at* [0020]. Because the bait is contained in the cavity by the mesh-like member, and the ground contacting surface may be considered the bottom of the device, the cavity and the bait are above the upper ground surface. Nor does Rollins expressly or inherently describe a mesh-like member to *cover the opening of the housing's cavity for retaining the bait*. Because Rollins discloses that the bait is in the screw-shaped body, the body cannot be a mesh-like member covering a cavity containing the bait *and* simultaneously be the cavity itself. Moreover, if the screw shaped member were to cover the opening of cavity as suggested in the Action, the three-dimensional shape of the screw-shaped body would prevent the housing's ground contacting surface from contacting the ground. Therefore, Rollins does not expressly or inherently describe a mesh-like member covering an opening of a cavity within a housing that is engaged with an upper ground surface, wherein the cavity retains the bait cartridge, as claimed.

Third, Rollins does not expressly or inherently disclose an inspection hatch for visually inspecting the bait from outside the housing. The sealing member (24) is not an inspection hatch for viewing the bait from outside the housing. The bait container is positioned in chamber (86) of screw-shaped body (14) and sealed with sealing member (24) after below ground installation of the device. *Rollins at* [0052] Rollins discloses that insect activity in the insect bait station can be monitored by first removing the sealing member (24) using a special tool, then removing the bait container (88) from the chamber (86) by hand before visually inspecting it. *Id. at* [0054]. Applicants respectfully submit that one of ordinary skill in the art would not conclude that the sealing member (24) of Rollins is an

inspection hatch capable of visually inspecting a bait cartridge within the cavity *from outside the housing* because of the need for special tools and physical removal of the bait container before inspection. Therefore, Rollins does not expressly or inherently describe an inspection hatch allowing visual inspection of the bait from outside the housing.

For the reasons stated above Rollins does not expressly disclose each and every element of claims 1 and 3-8. Therefore, Rollins cannot anticipate claims 1 and 3-8. Reconsideration and withdrawal of the rejection is requested.

With regard to method claims 10 and 13-16, the Action asserts that Rollins discloses the recited structural elements as above. The lack of anticipation of Rollins regarding these structural elements was previously discussed. The Action further asserts Rollins discloses the bait, the cavity, and the mesh-like member are configured to become increasingly visible through the inspection hatch as the bait material is consumed. However, Rollins device requires special tools and physical removal of its bait container for its inspection. Thus, Rollins device cannot be reasonably interpreted as expressly or inherently describing a bait or bait container becoming “increasingly visible” through the inspection hatch as the bait material is consumed. In contrast, the bait inside the cavity of the instant invention is visually observable “in a glance” from outside the housing. *Present Specification at [0026]*.

Further, Rollins discloses a bait station constructed for installation of the bait station below grade. *Rollins at ¶¶[0001], [0013], [0050]-[0052]*. The Rollins device, having a screw-shaped body defining a “toxicant/bait-receiving chamber” is “at least partially covered by the soil” and “at least partially below grade.” *Id. at [0010] emphasis added*. In contrast, present claim 10 requires a housing configured as a landscape element that is engaged with an upper ground surface *without implanting the housing* in the ground. As the housing includes the cavity that contains the bait, the cavity and bait would not be implanted in the ground. Based on the above, Rollins does not expressly or inherently describe each and every element of claims 10 and 13-16, which require a method where the bait, the cavity, and the mesh-like member are configured to become increasingly visible through the inspection hatch as the bait material is consumed. Nor can Rollins expressly or inherently describe where the housing, is not implanted in the ground. Therefore, Rollins cannot anticipate claims 10 and 13-16. Reconsideration and withdrawal of the rejection is requested.

Rejections under 35 U.S.C. § 103(a) are Traversed

Claims 2 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rollins in view of U.S. Application Publication No. 20030124166 to Brode, III et al. (hereafter referred to as “Brode”). Applicants respectfully traverse the rejection for the following reasons.

The Action acknowledges that claims 2 and 12 differ from Rollins in requiring the inspection hatch to be opaque. *OA, page 5*. However, the Action asserts that Brode discloses a termite device wherein the inspection hatch is opaque. Therefore, the Action asserts, it would have been obvious to one of ordinary skill in the art to modify Rollins in view of the teachings of Brode to include an opaque inspection hatch for preventing degradation of the contents of the housing by the effects of the sun.

As discussed above, Rollins does not teach each and every element of claims 1 and 10 from which claims 2 and 12, respectively, depend. Brode discloses a termiticidal bait matrix in a bait station installed in the ground. *Brode Abstract*. Brode discloses the bait station may further comprise a lid attached to an open end of the housing for removal or replacement, or both, of the bait matrix. *Id. at [0091]*. Even if the opaque lid of Brode were included in the device of Rollins, the combination would not arrive at an inspection hatch capable of visually inspecting a bait cartridge within the cavity *from outside the housing* because of the need for special tools and physical removal of the bait container before inspection. As a result, the combination of Rollins and Brode does not teach each and every element of claims 2 and 12. Therefore, a *prima facie* case of obviousness has not been made. Reconsideration and withdrawal of the rejection is respectfully requested.

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Rollins in view U.S. Patent No. 6,474,015 to Lund (hereafter referred to as “Lund”). Applicants respectfully traverse the rejection for the following reasons.

The Action acknowledges that claim 9 differs from Rollins in requiring the first portion to be connected to the second portion by a hinge. *OA, page 6*. The Action asserts Lund discloses a termite device where a second portion (20) is connected to a first portion (30) by a hinge (31), as shown in FIG. 2. Therefore, the Action asserts it would have been obvious to one of ordinary skill in the art to modify Rollins in view of Lund to include the first portion connected to the second portion by a hinge for maintaining the entire assembly in tact and preventing the parts from being displaced from each other.

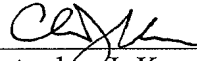
As discussed above, Rollins does not teach each and every element of claim 1 from which claim 9 depends. Present claim 9 depends from claim 8 and requires the first portion of the housing to at least contact, a) the upper ground surface, and b) a second portion of the housing with the inspection hatch and the cavity. The Lund device includes base plate (30) that attaches to anchor tube (5), cover (20) that attaches to the base plate, and bait cup (40) that holds a bait beneath the ground. *Lund at col. 2, lines 33-37.* The hinge (31) of Lund connects the cover to the base plate. The base plate is positioned on or adjacent the ground surface and receives the bait cup, which is positioned below ground. Thus, Lund does not teach or suggest a second portion of a housing with an inspection hatch that includes a cavity, where the cavity is above the ground contacting surface. Therefore, even if the hinge of Lund were included in the device of Rollins, the combination would not arrive at claim 9, which requires the first portion of the housing to contact the upper ground surface and a second portion of the housing with the inspection hatch that includes the cavity. As a result, the combination of Rollins and Lund does not teach each and every element of claim 9. Therefore, a *prima facie* case of obviousness has not been made. Reconsideration and withdrawal of the rejection is respectfully requested.

For the foregoing reasons, claims 1-16 are considered allowable. A Notice to this effect is respectfully requested. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

Respectfully submitted,

HUTCHISON LAW GROUP PLLC

Date: 1-14-2008

By: 
Christopher J. Knors
Registration No. 45,569

P.O. Box 31686
Raleigh, NC 27612
+1.919.829.9600